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ABSTRACT

School boards must recognize that bargaining with unionized teachers is becoming inevitable. Attempts to postpone formal negotiation usually result in giving away more by accident than would have been the case in the formal situation. While it is true that formal bargaining involves an adversary relationship between school boards and teachers, serious conflict is most easily avoided if both sides prepare seriously and recognize the realities of the process, including the fact that the process deals not with the needs of teachers as individuals, but with their needs as a group. As the public's representative in the negotiation process, the school board has a responsibility to limit the scope of the negotiations as much as possible. To this end the board relies on its credibility in the community as a source of strength. The union finds its strength not only in the board's failure of credibility, but in emotional confrontation with a board that is neither prepared nor willing to bargain seriously. (Author/PGD)

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Collective Bargaining and the School Board Member

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EA 010 634

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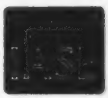

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About this book

It is imperative that school board members understand the collective bargaining process.

Yes, it is true that unions have not organized the employees in many school districts. In fact, only 43 percent of the school boards in Illinois signed formal collective bargaining agreements in 1977.

Yes, it also is true that collective bargaining is a job for well-trained professionals. School boards that hold their superintendents responsible for effective personnel management typically view labor relations as an administrative function.

Notwithstanding such circumstances, all school board members should learn all they can about collective bargaining in the schools.

For one thing, more school districts each year join the ranks of the "bargainers." The unions are organizing teachers and other employees in more and more districts. And if the state enacts a bargaining law, most non-bargaining districts will witness an over-night change in their labor relations. More importantly, teacher benefits are growing rapidly among Illinois' non-bargaining districts. It's apparent that many school boards—although they do not bargain formally with unions—are agreeing to benefits and delegating decisions that they would never dream of putting into a contract—and they are doing it simply to avoid formal collective bargaining. Unless board members understand the nature and true implications of collective bargaining, they may never know the price they are paying to avoid bargaining until it is too late.

As for the respective roles of the school board and administration, keep in mind that the former must set policies to guide the latter. The conduct of actual negotiations is an administrative function—but the administration cannot carry out that function satisfactorily without clear guidance

from the board.

Moreover, collective bargaining frequently is colored with strong political overtones in the community. Board members can find themselves under pressure from citizens or employees to answer individually for labor relations problems. The more board members know about labor relations concepts, the better they will be able to handle such pressures without compromising the total board or undercutting the administrative staff.

Many union leaders believe they can get more of what they want by isolating the board from its administrative team. Thus, they demand to negotiate directly with school board members. In order to respond intelligently—and forcefully—to such a demand the school board must understand collective bargaining, where it fits in the overall scheme of management functions, and the board's proper role in the bargaining process.

That is why this handbook was developed specifically for school board members. We sincerely hope that it proves helpful as an introduction to bargaining in the schools. Board members, of course, are encouraged to examine the subject in greater depth. The bibliography at the end of the book suggests further reading.

In addition, board members should consider attending bargaining workshops sponsored by IASB and other organizations in order to obtain a deeper understanding of the subject.

Harold P. Seamon
Executive Director

Illinois Association of School Boards
Springfield, Illinois

March, 1978

1/Some legal and political realities

The right to bargain

The First and Fourteenth Amendments to the *U.S. Constitution* guarantee the right of all citizens, including public school employees, to associate and assemble. Private sector employees acquired the additional right to bargain collectively with their employers under the National Labor Relations Act (Wagner Act), passed in 1935. This Act was later amended by the Labor-Management Relations Act of 1947 (Taft-Hartley Act). These two laws apply only to private sector labor-management relations. There is no federal law requiring public employers to bargain collectively with their employees.

Many states have passed laws which attempt to govern public employer-employee relations. Other states, including Illinois, do not require school boards to negotiate with employee unions. However, numerous court rulings in Illinois hold that school boards may negotiate with unions if they wish and provide a substantial body of law regulating such negotiations. Therefore, the absence of a collective bargaining law has not prevented Illinois school boards from entering into formal negotiated contracts. Approximately 43 percent of the school boards in Illinois have negotiated contracts with their teachers. In addition, numerous boards have negotiated contracts with nonteaching employees, such as custodians, engineers, clerks, bus drivers, and cooks. In states without a bargaining law, school districts with negotiated contracts tend to be located in or near urban population centers. However, numerous small rural districts also engage in collective bargaining.

Teachers and unions

Board members may, out of frustration or inexperience, consider the unionization of teachers as inherently evil or non-professional. They may blame themselves or the administration when their teachers turn to unions. However, there are a number of factors which cause teachers to unionize, many of which are beyond the control of local boards and administrators. For example:

- The growing size of the school bureaucracy reduces lines of communication.
- The job shortage in education makes it difficult for the dissatisfied teacher to switch employers.
- The teaching profession includes more and more primary family wage earners.
- Taxpayers are resentful of increased school costs and demand evidence of results.
- The 1960's brought a climate of rebelliousness and a decline of respect for authority, which made teachers' jobs more difficult.

Economic, psychological, and security needs of teachers also are factors in their decision to apply union strategy and tactics to local situations. The security needs of teachers are easily manipulated by skilled union organizers. Even the most benevolent and humanistic school board's unwillingness to grant union recognition is itself a tool for the organizer.

Board members find their roles frustrating until they learn to deal with teachers both as union members and as human beings. Efforts to give teachers more than the union does only intensify union demands. Efforts to break the union only increase tensions and unite teachers behind the union.

The board member should distinguish between employee relations and labor relations, so that each can be treated separately, realistically, and professionally. The ability to view the teacher's human and professional needs as separate and distinct from his or her security (union) needs keeps conflict and frustration to a minimum. Hopefully,

this book will be a first step toward acquiring this important ability.

The political factor

School boards and superintendents who have been to the bargaining table a few times have learned that it is difficult to represent the public interest and survive professionally. What is called "collective bargaining" in the private sector is not necessarily the same thing in the public sector. Rather, school districts often are saddled with a bargaining process that combines labor relations, human relations, management theory, and last but not least, politics. School boards and superintendents regularly survive the process, but the political aspect creates serious difficulties for them.

In its simplest terms, this means that if unions do not get what they want at the bargaining table, board members and superintendents can find themselves in jeopardy. If the teacher strike itself doesn't get the superintendent fired, then sometimes it's the loss of school spirit that often follows the strike or the teachers' refusal to maintain acceptable relationships with students and parents.

Even without the rigors of bargaining, superintendents can seal their own doom through neglect of faculty attitudes. Poor communications and other management weaknesses can set teachers against both the administration and the board. Today's teachers not only talk about their problems out of school, they organize campaigns to unseat board members and to remove the superintendent.

That leaves school boards and superintendents on the horns of this dilemma: How do they protect the public from the unions without making themselves the sacrificial lambs?

Some boards have said, let's forget the public and give the unions what they want. Other boards have stood fast against the union's demands and been ousted at the next election, soon followed to the sidelines by their superintendents.

Clearly, management survival has to be among manage-

ment's objectives in labor relations. Fortunately, many school boards and superintendents have demonstrated that they can indeed achieve the dual objectives of: (a) protecting the public interest at the bargaining table, and (b) protecting themselves against union attacks on management. The answer lies in how management approaches the bargaining process.

The board and superintendent who take union demands as personal insults and who try to beat down the union in the eyes of their teachers invariably find themselves in the eye of a storm. On the other hand, those who view bargaining dispassionately and who do their best to understand the needs of both management and labor are most often able to avoid serious conflict.

The fact remains, however, that board members and superintendents who ignore the political nature of public institutions do so at their own peril. The rest of this handbook explains the respective needs of management and union and shows how board members can deal constructively with teacher unions and their political ramifications.

Realities of bargaining

As more school boards are confronted with organized unions demanding recognition, observers of the collective bargaining scene have identified some *descriptors* of the negotiating process—some of the realities which all school boards will confront if they haven't already.

The first reality is that collective bargaining has a leveling effect. The all-for-one and one-for-all concept is what drives unions to organize and try to get what they want through collective means. Most school managers believe this leveling effect results in mediocrity, and it probably does to a certain extent. As policies are amalgamated into a contract and management is forced to treat employees alike, there is some loss of individuality, creativity, and initiative. In fact, some creative energy is re-directed from the classroom to union activities.

A second reality is that individual teacher needs are replaced by group needs. This surfaces very quickly when

agency shop or seniority clauses are brought to the bargaining table. Both of these demands meet the needs of the union organization rather than the individual employee.

The third reality: Bargaining statewide tends to equalize differences among districts. Districts in one part of the state will have similar contracts, union goals, and objectives as those in other parts of the state.

The fourth reality is that bargaining requires sophistication and skill. Collective bargaining is not something that a board can enter into with just the best interests of the district at heart. Rather, a board must confront bargaining with a complete understanding of what the process is all about. To acquire this understanding, there is no substitute for study and preparation. Those involved in bargaining must be armed with proper skills and relevant information. Adequate preparation makes a big difference in how smoothly the process goes, as well as in the final settlement.

Another reality is that initial efforts at bargaining in school districts are emotional and divisive. Emotion enters into both the organizing of the local teachers group and in the reaction of management to those initial efforts. Both sides have to be emotional for the union organizer to succeed. The initial union strategy will be to create issues, not to find solutions.

The sixth reality of collective bargaining is that the process itself is adversative in nature. It involves a power struggle. The only real power that teachers bring to bargaining is their services; to demonstrate their power, they will threaten to withhold those services. An adversary relationship does not necessarily lead to intensive conflict, but it does mean that the union will be on one side and management on the other side.

In industry, the labor relations process typically pits management (the have's) against labor (the have not's), and it is very easy for the ordinary citizen to side with labor. In public education, however, the underdog is not labor. Teachers often are able to muster much more clout than management. In addition, taxpayers can identify with management quite readily, because it is their money that

will pay for the settlement.

Boards of education should keep in mind that some form of collective bargaining is inevitable. When it comes to a particular district, the fact that teachers want to negotiate items which were formerly management prerogatives does not mean that board members are bad people. Teachers are led to believe that if they do not have a contract, they are second-class citizens. There is not much that boards can do to counteract that kind of propoganda. Union recognition probably can be delayed, but most evidence suggests that collective bargaining is here to stay and management might as well learn how to deal with it.

Also, labor peace cannot be purchased. Giving teachers what they want today to prevent having to negotiate a formal contract will only cause problems which will have to be solved later. The purpose of this book is to give board members and other interested citizens a basic understanding of this new educational dilemma called "labor relations" in hopes that the realities will be less threatening and the transition less painful for those new to collective bargaining.

2/How bargaining works

The bargaining process includes these basic steps: Establishing ground rules, initiating proposals, and responding with counterproposals. A fourth step emerges from the first three—determining what will be bargained. This is probably the most important step of all.

Ground rules

One of the first steps in the collective bargaining process is the negotiation of ground rules to govern the behavior of both sides. Though each situation is different, the following questions should be answered in the ground rules:

1) How often will bargaining sessions be conducted?
2) What should be the length of each session?
3) Who will serve on each bargaining team?
4) Will observers be permitted?
5) Will there be joint or separate press releases?
6) Where will sessions be held and at what time?
7) Is an agenda set in advance?
8) Can one party use outside assistance without consulting the other party?
9) Who keeps records and minutes? Are sessions to be tape recorded?
10) Will there be any guidelines for caucusing?

These are just some of the questions which need to be answered before the start of contract bargaining. Some negotiating relationships work well without ground rules, but rules are most helpful when bargaining the first contract or if the two chief negotiators are unfamiliar with one another.

Initial proposal

Some observers suggest that school boards give too much to the union because they operate from a defensive position. So people ask, "Why don't school boards take the initiative and make the first proposal rather than counterproposing after the teachers make their demands?" The argument seems to make sense on the surface. After all, the best defense is a good offense.

Most experienced negotiators, however, believe that management should not make the first proposal for two reasons. First, the board of education already has what the union wants. Psychologically, it is better for both sides if the board allows the teachers to make the first proposal. The board has nothing to gain in bargaining unless it is trying to regain something which was previously given away. The second reason for not encouraging boards to make the first proposal is that they might propose giving something to teachers which the teachers would not otherwise have thought about.

Board's counterproposal

After receiving the initial proposal from the teachers, the board's negotiating team should develop a counterproposal to be presented to the union's team at the next bargaining session. The board team's counterproposal should include items that management wants in the contract, and not be just a reaction to the union's demands. Every counterproposal should be written as an original document, using the board team's language and format. The aim is to get the union negotiator to use the board team's counterproposal as a point of reference. This helps move the contract language toward a management orientation, while minimizing the negative, reactive posture that comes from responding piecemeal to each union proposal.

It is not necessary to produce a counterproposal for each item proposed by the union. Deleting specific items, which the board team believes to be non-negotiable or unnecessary, is not only an acceptable practice but is also good

strategy. Initial proposals that do not appear in the board's counterproposal have a chance of being forgotten by the union team.

Analysis of the union's demands is essential. One method is to dissect each section of the proposal and identify: key issues, objectionable language (to be avoided at all costs), items which can be agreed to, compromise issues, and management's alterations. The counterproposal can then be developed as a result of the analysis.

What should be bargained?

In states with bargaining laws that apply to public schools, attempts have been made to define the scope of bargaining (that is, what is bargainable?).

A study by the Academic Collective Bargaining Information Service *(Government Employee Relations Report,* February 9, 1976) analyzed the scope of bargaining under public sector laws in 14 states. The study found that the subjects most often negotiable were wages, hours, grievance procedures, methods of teacher evaluation, and methods of teacher removal.

The study also found certain items commonly considered exclusive management rights and, therefore, not subject to negotiation. Included in this category are institutional mission and program, level of funding, employee hiring, discharge and supervision, job assignment, organization, work force size, service and recruitment standards, and employment conditions for employees who are not part of the bargaining unit.

The same study also found items where negotiability is a source of disagreement. Those items included parity in wages, class size, retirement benefits, agency shop, preeminence of a negotiated contract over existing laws, teacher preparation time, textbook selection, employee inservice education, and school calendar. It is a fair conclusion that, even in states with public sector bargaining laws, there can still be some disagreement over the scope of bargaining. Statutes usually identify subjects which must be bargained and stipulate that bargaining must be

in "good faith." In addition, some statutes itemize those subjects which may *not* be negotiated.

In states without bargaining laws, the scope of bargaining is determined at the negotiating table. For training purposes, the Illinois Association of School Boards separates the various subjects into: *minimals*, *probables*, and *avoidables*. (See **Table One**.)

Management negotiators generally agree that the right to hire, transfer, promote, and discipline employees is not subject to negotiation. Although these usually come up at the bargaining table, management should not bargain away the right to make final decisions.

Teacher unions generally hold that anything which affects the teacher in any way is negotiable. This interpretation is much too broad for management to accept so long as school boards are charged with responsibility for the schools. In fact, in the absence of a bargaining law, Illinois courts hold that discretionary powers delegated by the legislature to the school board cannot be diminished by a contract.

In general, the goal of management is to limit the scope of bargaining as much as possible. There are at least two reasons for this goal. First, education is a public function. The public's elected representatives must have final authority over the schools, including authority in hiring, transferring, promoting, and disciplining employees. A second reason for limiting the scope as much as possible is primarily a practical consideration. For boards of education, the bargaining process sometimes boils down to an effort to limit the scope as much as possible this year so there will be something to negotiate next year. The bargaining process for boards of education has become one of slowly bargaining away many of the decision-making powers which were formerly exercised unilaterally.

The goal of teacher unions in contract bargaining has, in general, been to expand the scope of bargaining as much as possible and to include by reference such items as board policies, state and federal laws, and state and federal constitutions. Usually these items are offered as harmless verbiage that seems innocent enough. However, their in-

Table One—Typical Teacher Union Demands

(Definitions of many of these terms can be found in the glossary.)

Minimal Union Demands

Economic Issues	Security Issues
• Salary schedules	• Grievance procedure
• Extra-duty salary schedules	• Negotiations procedures
• Insurance	• Recognition, right to organize
• Fringe benefits	• Elections, unit determination
	• Impasse resolution

Probable Union Demands

Economic Issues	Security Issues
• Hours worked per day	• Evaluation procedure
• Days worked per year	• Discharge or termination
• Preparation time	• Discipline
• Lunch periods	• Procedures for reducing work force
• Retirement bonus	• Union discrimination
• Work load	• Use of facilities
• Leaves—illness, personal, leave of absence, union business	• Notification of assignments
	• Grievance arbitration
	• Dues deduction

Avoidable Union Demands

Economic Issues	Security Issues
• Class size	• Academic freedom
• Non-paid assignments and duties	• Seniority
• Hiring practices	• Maintenance of standards (all board policies and past practices)
• Promotion and transfer	• Inclusions (e.g. U.S. Constitution, state laws, board policies)
• Use of emergency days	• Discrimination
• Maternity leave	• Administrator evaluation
	• Curriculum and program
	• Textbook selection
	• Pupil discipline
	• Agency shop
	• Evaluative criteria
	• Broad definition of grievance
	• Staffing standards: pupils/teacher, etc.
	• Professional qualifications
	• In-service training
	• Citizenship and constitutional protections
	• Student teachers
	• Committee assignments

For a more detailed discussion of these clauses and their impact on school boards, see the *Contract Analyzer* published by the Illinois Association of School Boards.

clusion will eventually lead to trouble. Including laws and constitutions in the negotiated contract is not necessary, because the board is required by law to abide by them. Including school board policies in the contract tends to destroy a very important power of the board—the authority and responsibility to adopt policy governing the management of the district.

Contract vs. policy

There are important distinctions between board policies and the negotiated contract. Board policies may be researched and developed through a democratic process, and formal adoption can be accomplished only by vote of the school board at a public meeting. The negotiated contract, by the very nature of the bargaining process, is a bilateral agreement privately arrived at. When negotiated contracts include all policies (even if only by reference,) the distinction between policies and contract is gone. Future boards of education may be unable to alter policies except through negotiations with the union.

In order to grasp the distinction between policies and contracts, it's helpful to understand their respective characteristics. Board policies are usually broad statements of intent which allow administrators to select the best ways of carrying out the board's wishes. Negotiated contracts, on the other hand, should contain explicit language that allows little flexibility in implementation and little room for error in interpretation.

Policies are heavily influenced by federal and state laws and regulations, as well as rulings handed down by federal and state courts. More importantly from the standpoint of local control, school boards are obligated to reflect community values and needs in the development of policy.

Policies guide the operation of the school district, while a negotiated contract directs specific details of that operation. Ambiguities in the contract are not usually advantageous for the board of education and should, therefore, be avoided as much as possible. Administrators should interpret the contract literally. Board policies generally

attempt to give greater freedom to interpret and implement.

Although the school board may try to withstand union pressure to negotiate board policy items, experience shows that some will probably creep into the negotiated contract. When this happens, the contract item supercedes board policy and any attempt to keep that item as a separate policy statement is an exercise in futility.* The policy handbook should no longer contain the written policy in its former spot, but should refer to the appropriate section of the negotiated contract. Attaching the contract as an addition to the policy handbook seems to be an appropriate step to take as more and more policies are pre-empted by the negotiated agreement.

Even though there is almost a fatalistic recognition that negotiated contracts will continue to include more and more items which were formerly board policy matters, the board of education should continue to exercise the right to adopt appropriate policies. Individual contract items will continue to supercede individual board policies, but in policy areas untouched by the contract school boards retain the authority and the responsibility to adopt policies which have the force of law in the operation of the school district.

*Exceptions to this are the discretionary powers which the legislature expressly delegates to the board and which the board is willing to fight to retain in court. Even where the board improperly delegates a power through its union contract, the usual inclination is to honor the contract until it becomes intolerable—usually after board membership changes.

3/The human element

Collective bargaining is an *adversary process.* This does not mean that the "opponents" have to hate each other. In fact, adversary bargaining works best in an atmosphere of mutual understanding and respect for the other side's needs and interests. But *adversary* does mean that there are two different and conflicting sets of goals and aspirations. Compromise and concession form the style in adversary bargaining, based on demands from the union and counterproposals from management. The basic purpose is to remove power and authority from one party (management) and transfer it to the other party (the union). The vehicle is the contract, or negotiated agreement.

Some authors describe the bargaining process as a forum for communications and cooperative problem solving. Such a description appeals to educators and school board members, because cooperation and communication are highly desirable. Unfortunately, the description is not realistic, because the terms "cooperation" and "bargaining" are contradictory. In some school districts, decisions are still made through cooperative methods. In more and more districts, however, decisions are made through bargaining.

In cooperative decision making, there is one side—a team. In bargaining, there are two sides.

The board of education is legally responsible to the state for providing school-age children with an education. This responsibility means that the board has complete authority regarding employing, compensating, transferring, evaluating, promoting, and firing personnel (as long as state laws are followed and constitutional rights of employees are not violated). To put it simply, teachers have a vested interest in their own employment and want a voice in decisions affecting this employment. Thus, a power struggle develops.

The board's reaction

Most boards of education take their responsibilities seriously. When teachers challenge the authority of school boards by demanding a negotiated contract, board members wonder why their authority is being challenged and are unsure of how to respond. One response is to try to buy peace by giving teachers what they want, hoping that the demand for a contract will go away. Another is to pretend to bargain or, in states without a bargaining law, to avoid the process completely.

Neither response is realistic. First, there isn't enough money available to reverse the trend toward public employee collective bargaining. Labor peace cannot be purchased. Teachers, propagandized by unions, believe they are second-class citizens if they don't have a negotiated contract. Pretending to bargain by simply going through the motions only creates resentment.

Stalling tactics often create problems that surface when the board finally agrees to bargain. For example, a board's past practices serve as the starting point for bargaining. Boards that give and give to reduce the demand for a written contract find they can't take back what they have already given when they finally decide to negotiate. Such boards have little left to bargain with.

A more appropriate response for boards is to recognize that collective bargaining with teachers is here to stay and realize that they need to prepare by becoming more sophisticated and more skilled in dealing with organized teachers.

Boards of education must recognize that the union—not the board—is going to represent employees. Although reluctant to give up its authority, the bargaining school board can no longer say that these are "our teachers." Boards represent the management viewpoint for those issues that are negotiated. They have to recognize that when something is given to teachers, the union gets the credit—not the board. If the union does not get the credit, it looks bad in the eyes of its members. And that is going to create problems, because union leaders must have the support of their members (including dues).

Successful school boards skillfully give teachers about

what they would have gotten anyhow, but let them think the union won it. That's successful bargaining from a management point of view, even though it's hard to live with because it destroys the concept of the school board doing good things for teachers and students. In the eyes of the teachers, the union is going to get credit for all the work done by the board, and the board will have only the privilege of going to the taxpayers to obtain the funds necessary to finance the negotiated package. Boards then confront the reality that they must manage by policy *and* contract. This reality comes etched in stone—*a policy can be changed anytime by a school board vote; a contract can be changed only with union consent or by a court of law.*

In general, boards of education try to retain all of their authority and options in decision making. (Someone has said that the perfect contract from the board's perspective is a blank sheet of paper.) The days of unilateral decision making are gone, however. The board's best strategy is to recognize the adversary process and get prepared for bargaining.

Constraints on bargaining

What do teacher unions want? In general, they want all they can get. To justify its existence, the union must get more each year. Common union objectives include more economic benefits, more security, and more power. Because all of these items have heretofore been determined by unilateral action of the school board, anything the union can get is more than they started with. In many cases, as long as they obtain more each year, the members believe that the union has done a good job.

Public school employers resist collective bargaining on the grounds that there are basic differences between the public sector and the private sector. Such differences do exist, but they obviously do not prevent bargaining. Some of those differences are presented in **Table Two.**

Human relations and labor relations

School managers often confuse human relations with

Table Two—Private Sector vs. Public Sector

Private Sector Company	Public School
1) Selects its target populations for marketing products.	1) Must accept clients who live within the district boundaries.
2) Prices can be increased by management	2) Citizens vote on most tax increases.
3) Can change its location, seeking more favorable work force.	3) School district can't move.
4) Can go out of business if unable to meet union demands.	4) School district stays in business no matter what happens (almost).
5) Can share profits with workers.	5) Schools have no profits to share.
6) Customers select and pay for the products or services they want.	6) All citizens pay for school services, whether or not they use them.

Table Three—Human Relations and Labor Relations

	Human Relations	Labor Relations
Process	Consensus	Adversary
Agenda	Problems and Needs	Demands
Arena	Personal-Humanistic	Legal
Result	Change or Development	Contract Obligation
Emphasis	Self-actualization and Growth	Economics and Security
Goals	Internal (for the school)	External (for the union)
Participants	Individuals	Union
Location	Local Issues	Statewide Demands
Benefits	To organizational goals and clients through better programs	To union and its members through increased benefits, power, security

labor relations. Their thinking is that "maybe if we deal on a human level the need for a union will disappear." Humanistic board members and administrators are easily confused by the distinction between human relations and labor relations. They try to make human relations programs replace labor relations, even though the two are distinctly different, incompatible, and serve different purposes. Basic differences between labor relations and human relations are listed in **Table Three.**

The humanistic management will probably "play" bargain with the result a terrible contract covering everything imaginable, unheard of benefits, and a vocal, domineering union. The human relations program will not necessarily be improved—people will not have grown and developed or the district's goals met—because bargaining can't do those things. Only the union organization itself will grow fat and healthy, thanks to a naive, gratuitous adversary. When management finally discovers what it has done and tries to recoup its losses, a real battle develops. Then both labor relations and human relations suffer, a situation that could have been avoided if the two processes had been treated separately from the beginning.

Employers adopt one of the above strategies for a variety of reasons: Bargaining is new and unfamiliar; change is threatening; their authority is challenged; their self-interest is threatened; they have to adapt; egos are involved (how could they do this to us?); and they may feel they are being punished for past failures. Employers would be much more productive if they accepted the reality of unionization and adversary bargaining and spent their efforts in developing strategies, plans, tactics, and skills necessary to bargain effectively.

The importance of credibility

Credibility is the tie that binds school board and community. Regardless of any differences of opinion that might separate a board and community, real problems do not begin until the community decides that the board isn't being honest.

The difficulty with teacher union leaders is that, even if they know the board is telling the complete truth, they will still try to destroy the board if it's in their best interest to do so. The union leader, as distinguished from the rank-and-file teacher, is more than an adversary across the bargaining table; he's an adversary, period. Organizing a union is a political process, and part of the organizer's job is to destroy the credibility of management. Loss of credibility usually means loss of job effectiveness and, probably, loss of job.

Managers in the private sector understand this and go to some pains to ensure that boards of directors and shareholders get the management viewpoint when workers strike. The management of General Motors may not have much credibility with employees when it comes to bargaining issues, but they surely have credibility with company owners. Private sector managers are rarely fired because of what employees say or do.

In the public sector, the public is the owner and employees are a part of the public-owner group. The shareholders (taxpayers) have many interests, ranging from "give them what they want" to "give them nothing and make it retroactive." Their economic interest is only one of many variables when citizens choose sides.

Building credibility

In the field of school public relations, it has long been axiomatic that good community relations begin with good staff relations. Teachers and other employees are regarded by their friends and neighbors as experts on all school matters. Surveys show that custodians have more ready listeners than do principals or superintendents. If teachers and custodians are to serve as ambassadors of goodwill, boards must see that they have all the facts. When the community gets different versions from administrators and teachers, it's a rare superintendent who can marshal more public support than can the combined efforts of the faculty.

Superintendent survival, therefore, may depend upon employee attitudes as much as upon the school board. If

that's the case, what can the superintendent do about it? What can the board do to protect the superintendent?

The same answer comes back again: Establish and maintain credibility. The superintendent who tries to make teachers like him will fail. People can love—but not respect—someone they can push around. The one who views teachers as enemies will also fail.

Teacher militancy and unionism force school managers to balance benefits for constituents (students and taxpayers) with benefits for employees. In the past, the shrewd administrator could play both ends against the middle, devising a school budget according to the superintendent's priorities and still keeping everyone relatively happy. That isn't so easy when teachers begin talking in negative terms to friends in the community or fighting for "a piece of the action."

Credibility today depends upon effective, action-oriented administration and communications that correspond accurately to the facts. If boards aren't going to give teachers a share in decision making, they must say so and mean it! If they are, they must plan carefully, do it well, and mean it!

Credibility for the board and superintendent alike boils down to this:

- Know what you mean;
- Say what you mean;
- Mean what you say.

4/How laws affect bargaining

Bargaining legislation

Currently, more than 35 states have statutes governing collective bargaining for public school employees. Some of the other states, including Illinois, have school districts which negotiate without a specific law to guide the process. Do the laws make a difference? How are the bargaining process and the contract affected by laws which govern negotiations?

There are many laws (federal, state, and local) which exert an influence upon bargaining. This section, however, is concerned with only those laws which have been legislated into existence expressly for the purpose of governing the bargaining process. These laws are referred to by various titles in different states—including Public Employee Relations Act, Employer-Employee Relations Act, and Educational Employment Relations Act—which indicate that some state laws cover more than education employment relations. A survey conducted in 1976 by Gerald C. Knoll of the National Academy of School Executives indicated that:

1) Twelve states had laws covering collective bargaining for all public employees.

2) Another twelve had laws covering collective bargaining for professional employees of public school districts. Another six states had laws which said that the parties must "meet and confer" relative to professional employees.

3) Twenty-three states (including the 12 cited in 1 above) had laws which govern collective bargaining for classified employees of public school districts.

Since this survey was taken, several more states have passed laws governing collective bargaining for public school employees, bringing the total to more than 35.

Why law?

Most public employee bargaining laws use the National Labor Relations Acts as models. These federal laws govern the private sector. Unfortunately, evidence suggests that state laws that emulate them are not very successful in transferring private sector bargaining processes to the public sector. In fact, many states ignore the clearest lesson from the private sector—that collective bargaining is a *power relationship.* Many of the state laws attempt to place collective bargaining in an ideal setting in which employer and employee engage in rational discussion and neither party ever resorts to force. Such laws, for example, typically outlaw or severely restrict the use of strikes. The result is that the public employee unions break the law (by striking anyway) or settle for a kind of pseudo-bargaining known as "meeting and conferring."

More and more unions in more and more states have made it clear that they will not settle for "meet and confer," and union leaders are ready and willing to accept the martyrdom of jail sentences and heavy fines that are imposed on public sector strikers. Stated simply, those who advocate public sector bargaining combined with a ban on strikes overlook the power nature of negotiations and the role that the strike threat plays in establishing a balance of that power.

However, the traditional argument against allowing strikes in public employment remains overwhelmingly strong and has yet to be adequately rebutted. That argument says that most governmental operations are established by the public as monopolies to provide services for which there are no readily available substitutes. The powerful role which competition plays in the private sector rarely exists to discipline or modify the goals of the parties in the public sector. Public sector contract settlements, therefore, often come at the expense of the public, with little

regard for budgetary or market realities. So the argument remains: If the strike right is granted in public employment, there is a large risk that strong organizations will benefit at the expense of the unorganized, of relatively small and unimportant organizations, and of the public at-large.

In sum, if collective bargaining does not work well without the strike, and if the strike makes little or no sense in the public sector, large doubts remain as to the wisdom in the long run of attempting to provide, by statute, negotiating rights to public employees. Those doubts have not, however, prevented the proliferation of collective bargaining laws throughout the country.

Why bargain without a law?

What happens in states (Illinois, for example) where no collective bargaining statutes exist? Do they have formal or informal bargaining?

Typically, states without collective bargaining laws have examples of both formal and informal bargaining. In Illinois there are statutes which influence bargaining agreements (tenure law, minimum sick leave provisions, etc.), as well as court cases which guide the negotiations process and restrict agreements.

Districts which engage in formal bargaining are, therefore, guided by related statutes and court decisions. However, the final decision of whether to bargain is left to the board of education. One might ask: Why would a board enter into formal bargaining if there is no law which requires it? The answer is, *pressure*.

The pressure to bargain comes from various sources. First, there is obvious pressure from teachers who believe that they are second-class citizens if they don't have a negotiated contract. Informational picketing, public relations campaigns, and strike threats all pressure a board toward formal negotiations. Second, there are always people who believe that negotiating a formal contract with school employees seems reasonable. ("We bargain at our plant, so why not let teachers bargain?") A third source of pressure

comes from board members themselves. This pressure is especially prevalent if one or more of the board members is employed in a private sector situation where formal bargaining is accepted as a matter of course or where board members have been elected with teacher union support.

In a state without a bargaining statute, once a board of education recognizes the teachers union (or any other union), the negotiations process proceeds much as it would if there were a statute. Some statutes provide mandates regarding scope of bargaining and impasse procedures designed to assist the bargaining process. In states without a statute, what is negotiable and impasse procedures are decided at the bargaining table, thereby providing both boards and unions with more flexibility.

Informal bargaining

So far, districts that have avoided formal negotiations probably feel that they have kept teachers from "taking over the district." Most districts, however, are bargaining with their teachers even if there is no signed contract. Meeting and conferring, discussing, communicating, and talking are euphemisms for bargaining in those districts that do not negotiate formally with their teachers. Such districts have already begun bargaining without the formality of a signed contract. A lot depends, of course, on what they are talking about.

School boards which are not engaged in a formal bargaining process probably think they can take care of everything and everyone with board policies. However, these policies can become a source of difficulties.

Because the board is not confronted with the threat of a formal contract, it is easy to confer with teachers about many different topics and issues, including curriculum, board policies, teacher salaries, and district goals. Discussions cover a wide scope of topics, including many that the board would never dream of negotiating in formal bargaining. But this creates what is called "past practice." Once these districts are forced by law or by pressure to write a contract, they will sit down at the bargaining table and say,

"Now that we're going to bargain, we're going to take away all those benefits." That won't work for two reasons. First, now that the union is representing teachers at the bargaining table, they don't want to lose. Second, any neutral third party who may become involved is certainly not going to grant teachers less than what they had before. This is why efforts to buy labor peace can cost more than formal bargaining.

School boards that engage in formal bargaining also need to use board policies, but not to keep the union away. Boards may bargain many different items relating to board-teacher relationships, but should continue to establish policies in areas that are beyond the scope of formal bargaining such as teacher evaluation, transfer, discipline, and promotion. Policies can continue to play an important role in managing the district and in some cases can serve as an alternative to placing something into the contract.

It is important to remember that board policies and negotiated contracts are separate entities. The distinction between the two must be maintained or boards of education will end up negotiating all of their policies. Do boards really want the union to help decide when board meetings will be held?

Do laws make a difference?

Bargaining in the public sector is a relatively recent phenomenon. Therefore, conclusions about the effect of laws upon bargaining would probably be premature. There is one widely publicized statistic, however, which provides an indication of the impact bargaining laws have had. In almost every case, there have been more strikes in states following the enactment of legislation than there were in the same states prior to passage of the law. Have the laws caused the strikes? No cause-and-effect relationship has been established, but it is obvious that the laws did not decrease the number of strikes.

5/Preparing to bargain

Bargaining preparation is crucial. Over the past few years, teacher unions have made substantial inroads into board power and authority largely because of their superior preparation. For board members, adequate preparation for bargaining includes acquiring knowledge about unions, selection of a negotiating team, and pre-bargaining planning.

Union preparation

The superior preparation of unions is widely recognized and can be attributed to at least two factors. First, local teacher unions generally enjoy more continuity of leadership than boards do. Some teachers get deeply involved in union leadership and bargaining. This involvement becomes almost a second job.

Board members also get extensively involved in bargaining. However, board members do not serve on boards for as long as teachers serve as teachers. In many states a board term is roughly equivalent to the amount of time required for a teacher to acquire tenure.

A second factor is that teacher unions have been interested in bargaining longer than management has. Some boards didn't believe that teachers were serious about bargaining until their state passed a bargaining law. By that time, the unions were already geared up for negotiations and boards were scurrying around for advice and training. Superior financial resources also play a big role in providing unions with their advantages. Unions can purchase expert training and counseling, as well as the services of experienced negotiators.

Unit determination

In states with bargaining statutes covering public school employees, selection of an exclusive bargaining representative is specifically covered, step-by-step. Typical procedures include: 1) a formal election to choose the exclusive bargaining representative (usually one of the mandated options is "no representative"); 2) election to be conducted by a state body, such as a Public Employment Relations Board; 3) time requirements and preliminary petitions relative to the election process; 4) the sharing of election costs; 5) a decertification process to change or eliminate the exclusive representative, and 6) the make-up of the bargaining unit (who is included in the unit).

School districts in states without a bargaining statute are not required to follow specific procedures for determining the exclusive bargaining representative. Boards of education are free to establish their own criteria for the selection. Many boards follow a procedure similar to that followed in the private sector (which most statutes are patterned after). Other boards simply ask for evidence that the petitioning union is truly representative of the teachers. This evidence is usually in the form of union membership, and boards may require 60 to 75 percent membership as the criterion for deciding that the particular union can serve as the exclusive bargaining representative.

Determining who will be included in the bargaining unit is one continuing source of conflict, even in states with statutes which supposedly cover the question. The primary argument centers around management and supervisory personnel; there is general agreement that both should be excluded from rank-and-file employee units. There is, however, considerable disagreement about who is classified as management and supervisory. The Illinois Association of School Boards has identified management and supervisory positions as those which require their incumbents, among other things, to act or recommend action on behalf of the board with respect to any of the following: hiring, assigning, transferring, promoting, evaluating, rehiring, or failing to rehire, laying off or recalling, or disciplining of any

employee or implementation or administration of the collective agreement at any level in the organization or adjustment of grievances at any level.

Each state with a bargaining statute usually has its own criteria for determining who is to be included in the bargaining unit. Disputes arising from this question are channeled through an employment relations board and, if necessary, through the courts. In states without a bargaining statute, the question is resolved at the bargaining table, sometimes with assistance from the courts.

Selecting the negotiating team

As union and board prepare for bargaining, each side must select a negotiating team. This decision is critical because interaction between the two teams influences the outcome of bargaining.

In general, the board of education should not get involved in the selection of the union negotiating team. Unions, of course, would be well-advised to select representatives who are competent and who have the authority and credibility to negotiate for the unit. Management representatives appreciate competency on the opposing side of the table because it facilitates the bargaining process.

There is considerable disagreement among management negotiators as to what constitutes an ideal negotiating team. Composition of board teams varies all the way from board members only to administrators only. One fact is certain: An ideal team in one situation may not be an ideal team in other situations. Boards of education need to assess their own bargaining environment and then choose the team which will work best.

Negotiating teams should contain at least three persons but not more than five. Fewer than three limits the ability of the team to relate to various aspects of the district's operation. More than five team members is cumbersome.

Selecting the chief negotiator

Selection of the chief negotiator is probably the single

most important decision to be made regarding the composition of the management negotiating team.

Who should serve as the chief negotiator? Although there are varying opinions, most authorities agree that neither the superintendent nor any of the board members should serve as the chief negotiator. An outside professional or a central office administrator probably should fill this important role. Whoever is selected should be skilled or should receive extensive training.

One question often asked is, "Should the chief negotiator be an attorney?" The answer is that bargaining competence is more important than general legal knowledge. Negotiating teams should always have access to legal advice, but it is not necessary for the head negotiator to be an attorney, nor is it necessary that an attorney be on the bargaining team. One word of caution: Do not place the board attorney on the negotiating team unless he possesses expertise in collective bargaining. If the board does not have a professional negotiator, the attorney should be consulted for legal advice and should review any contract before the board adopts it.

A primary reason for selecting the head negotiator prior to the selection of any other team members is to allow the negotiator some input into the selection of the other team members. Other team members should be chosen to complement the abilities of the negotiator. Team members must be able to work together toward the common goal of a good contract for the board. The other team members may be selected from central office administrators (not the superintendent, unless he is the only central office administrator), principals, supervisors, and board members. Board members should only be chosen in districts where, because of size or a lack of expertise, there are not enough qualified administrators or supervisors to compose a team or where board member feedback to the total board is necessary. In 1970, the National School Boards Association passed a resolution at its annual convention stating: "The NSBA urges that school board members do not directly participate in the technical day-to-day negotiating proceedings; rather,

they should obtain skilled professionals to negotiate for the board."

Management team planning

Planning and preparation prevent mistakes and save the board from later embarrassment. Over-preparation is rarely a problem; under-preparation is often a problem.

One way the team can prepare is to assemble data and information regarding bargaining developments outside the district. These should include such things as economic packages bargained in other districts, contract language used in other districts, legislative developments regarding school funding, and the results of hearings or court cases which might influence the local contract.

Another step in planning is the analysis of union demands. Often, union demands are delivered to the board of education prior to the initial planning. This gives the management team an opportunity to analyze those demands and plan strategies as the counterproposal is being readied. Analysis includes identifying items or clauses which can be agreed to rather readily, identifying items or clauses which are unacceptable, and developing compromise language proposals where desirable.

A third step in the preparation process is to determine parameters and develop strategy. In planning sessions with the board of education, the bargaining team should obtain directions from the board relative to economic and non-economic parameters. Where possible, board directions should allow room for maneuvering and negotiating. Rigid parameters make negotiating difficult and limit the team's ability to reach agreement with the other side. At the same time, if there are issues on which the board desires little or no compromise, the team should know it. Negotiations between the board and its negotiating team sometimes turn out to be more difficult than bargaining with the union. The management team must know the total board's position on the crucial items. More than one management team has negotiated a tentative contract only to discover that

it had misinterpreted the board's desires. Preliminary planning provides the foundation upon which the management team's credibility is built. The greater the credibility, the smoother negotiations will proceed.

6/Roles and responsibilities

Role of the school board

As boards of education become involved in collective bargaining, they encounter some new roles and responsibilities for themselves and their administrators. They also encounter a relationship with a new kind of school expert—the chief negotiator.

In general, the role of the board of education is to engage in planning activities that lead to a reasonable contract with the union. Planning includes developing goals, objectives, and parameters for the negotiator. One of the most important steps is selecting the negotiator who will speak for the bargaining team. The head negotiator should then select the remaining members of the team, in consultation with the superintendent and school board. Selection of the team members should always be subject to board approval.

During the negotiating process, the board and the negotiating team should maintain close communication. Usually this is best accomplished through the superintendent or his designee, who probably works closely with the bargaining team in addition to regular duties as chief executive. Sometimes communication can be handled best by the head negotiator dealing directly with the board. The total board should not get involved in direct negotiations with the union. Even more important, *individual board members should resist any impulse to communicate directly with the union unless so authorized by the total board.*

Initial communications between the board and its bargaining team provide the team with the goals and objectives which the board would like to pursue. The board will want to establish some parameters to guide the bargaining team. There should be some flexibility, but there should be a frank

Table Four—The School Board's Role In Labor Relations

As Policy Setter

- Develop parameters based on district goals.
- Select negotiator and procedures.
- Insist on employee relations goals and objectives in bargaining, in contract management, and in human relations.
- Understand unionization.

As Individual Board Members

- Develop basic understanding of bargaining.
- Distinguish labor relations from human relations.
- Don't be co-opted or used by the union to further its goals.
- Realize that the board's public position in labor disputes must be unanimous.
- Protect the confidentiality of the board's strategy.
- Don't play mediator.

At Impasse

- Understand and expect pressures.
- Establish a unanimous position with one spokesman.
- Know the legal limitations of individual board members.
- Don't stand alone—present a united school board position and get community support.

indication of which issues and dollar amounts the board feels most strongly about. As negotiations proceed, the board and team may have to discuss which items the board is willing to take to impasse proceedings or over which to accept a strike. At some points in the process it may be necessary for the board to update and revise its original parameters. Boards should not, however, get into the habit of intentionally withholding concessions from the bargaining team which the board planned to allow into the settlement from the beginning. Such a practice weakens the credibility of the bargaining team, and the union will forestall serious bargaining until the board begins to bargain directly with the union.

One of the goals of the chief negotiator and the bargain-

ing team is to negotiate a contract which the board will ratify. If communications have been regular and open between the board and the team, there should be little doubt that the agreement will be ratified. Boards, however, are obligated to carefully review the tentative agreement prior to ratification. If any part of the agreement is not satisfactory, the board retains the right to withhold ratification. Sometimes the unsatisfactory portion can be changed to the mutual satisfaction of the board and the union without returning to the negotiating table. Other times it may be necessary to send the bargaining team back to the table to obtain a more favorable agreement. The decision to withhold ratification and send the bargaining team back to the negotiating table should be very carefully deliberated, because the consequences are potentially damaging. Withholding ratification over a major item of the contract suggests that the board and its bargaining team have not been communicating very closely and can destroy the credibility of the management negotiating team.

The school board's role in labor relations is outlined in **Table Four.**

Role of administration

The basic role of the administration is to provide resources, information, data, and general all-around support for the school board and the bargaining team prior to and during negotiations.

Central office administrators as well as building administrators may be called upon to support the process by:

1) Identifying portions of the current agreement which make contract management difficult;

2) Gathering data from school districts with similar characteristics which indicate the direction settlements are taking;

3) Developing facts about school operations which will be affected by any agreement (salary and fringe benefit costs, etc.);

4) Serving as consultant to the management bargaining

team relative to any proposals being made for the new contract; and

5) Serving as a permanent or temporary member of the bargaining team.

When the contract goes into effect, central office administrators and building principals should be put through contract management training to learn how to deal directly with the negotiated agreement. The contract has numerous implications for management of the schools and programs. The chief negotiator should help the administration ensure that the contract is administered fairly and consistently.

Building level administrators are vitally important to the bargaining process. They alone will interpret the contract on a day-to-day basis. They, therefore, must be involved in developing bargaining goals and strategies and must be trained to administer the contract. Principals should also be represented on the board's bargaining team. If not, the impact of bargaining issues on the school will not be carefully considered; the contract will be poorly administered; and if left out, principals may also turn to collective bargaining to protect their self interests.

Role of the negotiator

One the the tenets of collective bargaining is that one person should be designated to speak for the bargaining team. The person so designated should be the only one who engages in across-the-table negotiations. The designee could be any person on the bargaining team, but it is usually better to identify the head negotiator prior to the selection of the remainder of the team.

Wesley Wildman suggests that the head negotiator must be flexible, courteous, honest, patient, and empathetic if negotiations are to be positive rather than negative. In addition, the negotiator must understand education as well as collective bargaining. Knowledge of or access to laws, court decisions, and arbitration rulings and interpretations are essential.

What is the role of this head negotiator? First, the negotiator should select, subject to board approval, the other

team members. As leader of the team, the negotiator is expected to assign specific responsibilities to team members, solicit ideas from them, and make certain that they understand the roles assigned.

Once the bargaining team is selected and assigned, the negotiator orchestrates the management team's performance during the negotiating process. Table tactics and strategies will be directed by the negotiator with the ultimate aim of obtaining agreement on a contract within the parameters established by the board.

In addition, the negotiator should be an expert in contract language, so that problems in the old contract can be removed and future problems avoided.

Finally, the negotiator should recognize when it is time to call for assistance, especially legal assistance. The negotiator is not expected to possess all of the answers for every section of the contract proposal, but should feel free to contact appropriate resource persons when there is a question to be answered. Besides attorneys, state school board associations can also serve as a resource to the negotiator and the bargaining team.

The decision whether to obtain the services of an outside negotiator or train someone on the staff is the first and maybe most important decision the board will make. This decision is best made by first analyzing the skills, experience, and abilities of the local staff and to determine whether the conflicts inherent in the bargaining process will diminish their effectiveness in their day-to-day jobs. If no one locally has the ability or interest or if role conflicts will be detrimental to their regular job performance, the board will find that its needs are best served by obtaining qualified assistance. The negotiated agreement is too important to be negotiated by someone ill-prepared and unfamiliar with the process.

The role of the community

The subject of "community involvement" in teacher bargaining remains unsettled. On the one hand, the industrial model of collective bargaining requires privacy

in order to work. The parties must be able to discuss proposals freely, exchange confidences, make trade-offs, and back down without losing face.

By the same token, school boards are expected to represent the best interests of their communities. The actual conduct of bargaining is an administrative function, but the school board is expected to establish guidelines and to approve or reject the final contract based on what is best for the school district and its constituents.

On the other hand, many parents and taxpayers feel a loss of control over the destiny of their schools. They see their school boards surrendering authority over educational and financial decisions to the unions. As student services are cut to finance higher teacher salaries and decreased workloads, a credibility gap begins to open between the school board and the public. Citizens see costs going up as services go down. Thus, there is a growing concern among many citizens that they—as well as management and labor—should be present at the bargaining table.

Although at least one state (Florida) has gone so far as to mandate bargaining in open meetings, both school managements and unions tend to resist public involvement in the bargaining process. The industrial model of closed bargaining between expert negotiators represents a known quantity. Both sides can look to the experience of private sector labor relations for guidance.

Where the school board enjoys a good relationship with the public and vigorously defends that relationship at the bargaining table, the results of closed bargaining are generally acceptable to the community. Where the school board fails either to recognize public sentiment or to defend the public interest, the contract settlement arrived at privately risks public disaffection.

The complexity of the labor-management relationship in education is compounded by the fact that both sides sense the importance of "good PR" when negotiations reach a stalemate. Unlike bargaining in the private sector, school bargaining is heavily influenced by the need for public approval (or the fear of negative public opinion). Teacher unions, in particular, employ a wide array of communica-

tions strategies in order to generate public support when teachers anticipate striking. How the board reads public opinion often determines the ultimate outcome of a strike—and the board that misreads the sentiments of its community may agree to a contract settlement that the community does not approve of.

What striking teachers fail to realize, of course, is that the strike itself usually says far more about their priorities than mere words can begin to offset.

School boards, too, frequently fail to accurately understand public attitudes and the impact that their actions have on those attitudes. Consequently, citizens are sometimes subjected to biased opinions from both sides, specialized information that is intelligible to only a few, or a running barrage of charges and counter-charges. Yet, public attitudes toward the parties are determined far more by their actions than by their words. Whether the subject is bargaining in general or a stalemate or strike, the parties demonstrate by their deeds how they feel about the public, the schools, and their labor relations.

Nationwide surveys of public opinion show that labor relations ranks very low as a topic that people want to know about. Citizens are much more interested in student progress and in educational programs and their costs. There is much evidence, however, that the interest of parents and taxpayers comes quickly alive when schools are closed by a strike or when the school board agrees to a contract settlement that curtails parental rights or forces program cuts.

Obviously, school boards are well advised to strive for contract settlements consistent with community sentiment and to keep the community informed of their labor relations objectives.

7/Disputes

Impasse

Althcugh the goal of the negotiations process is to reach agreement and then live by that agreement, a dispute can arise that results in an impasse. This can occur during bargaining or be produced by a grievance during the implementation of the contract.

There are several options available in resolving an impasse during the bargaining process. In states with bargaining statutes, the steps to resolve an impasse are usually prescribed by law. Districts operating without a state bargaining law are generally free to decide at the bargaining table which impasse resolution steps will be adopted.

Mediation

The first step usually prescribed or selected is that of mediation. Mediation involves selecting an impartial observer, usually someone with mediation experience, to assist in bringing the two sides together. There are no decisions rendered by the mediator; everything is advisory. If the two parties decide they can reach agreement during mediation, the impasse is resolved. Sometimes the mediator is successful in getting one or both sides to move closer to an agreement, but not quite enough for an actual agreement. Other times the respective positions are so rigid that there is virtually no movement by either side. If an agreement is not reached, then the impasse resolution process usually moves to the next step that is prescribed or agreed on.

Fact finding

Fact-finding could be the next step, although many nego-

tiators on both sides of the table are not enthused with any step beyond mediation. This involves selecting a mutually satisfactory fact-finder, either a neutral individual or a three-member panel (one from each party plus a neutral chairperson). The fact-finder conducts an investigation of the situation in an effort to identify all of the issues still unresolved. Depending upon either the law or the bargaining agreement, the fact-finder will either point out potential settlement possibilities or make a precise recommendation for resolution of the impasse. If both parties accept the fact-finder's recommendation, the dispute is resolved. Neither party, however, is bound to accept fact-finding recommendations. The fact-finding step is purely advisory. However, refusal of the fact-finder's award usually results in poor public relations and a weakened position.

Arbitration

If mediation and fact-finding do not produce an end to the impasse, the next possible step is arbitration. Arbitration is not popular with boards of education, because it sometimes allows a neutral third party to make decisions which rightfully belong to the board. There are several types of arbitration which operate in both the private and public sectors:

1) Interest arbitration—This refers to arbitration during contract negotiations. Interest arbitration is *voluntary* when both parties agree to submit disputed issues to arbitration and is *compulsory* if required by law. *Binding* arbitration means that the two parties are bound to follow the decision of the arbitrator. *Advisory* arbitration means that the two parties are not bound to accept the arbitrator's decision.

2) Grievance arbitration—This refers to the use of an arbitrator to interpret the meaning of the contract when a grievance is filed, disputing implementation of the contract.

Interest arbitration is used to resolve impasse during contract bargaining. Whether the arbitrator's award is binding or advisory depends upon the law or previously

agreed upon procedures. Binding arbitration shifts decision making authority away from the board to a third party and is, therefore, thought to be a serious encroachment upon school board authority.

While grievance arbitration is rather common in school board contracts, interest arbitration is rare.

Grievances and grievance procedures

Disputes between teachers and the school board which arise from the implementation or interpretation of the negotiated contract are referred to as "grievances." Of course, a teacher might have a complaint about almost anything connected with the operation of the schools. Howevern, formal grievances and grievance procedures are best confined to disputes directly related to the implementation or interpretation of the agreement. Language to this effect should be included in the negotiated contract so that grievances cannot be extended to board policies, rules, and regulations.

The grievance procedure is a tool the union uses to enforce the contract. As with most tools, the grievance procedure is used and abused. Teacher unions have been known to use the tool to harass particular administrators. They also try to broaden the scope of the contract by grieving things not already in the contract, unless proper language prevents this tactic.

Basically, the grievance procedure provides an orderly process for the handling of grievances brought by a teacher against the contract administrator. The grievance procedure should include the definition of a grievance and specific steps to be followed to achieve a resolution of the dispute. Each step should be accompanied by specific time limits which keep the process moving while allowing the administrator at that particular step enough time to make a decision. The procedure should also include specific provisions for appeal and identify the final step, whether it be the superintendent, the board, or an arbitrator.

Strikes

Most state supreme courts which have made decisions regarding the legality of strikes in the public schools have ruled that strikes are illegal in the absence of specific legislative authorization. A few states have taken care of the question legislatively by authorizing a "limited right to strike." Most state legislatures, however, have either ignored the question or specifically stated in the bargaining statute that strikes are illegal. The strike is still a weapon which is used by teacher unions in many states, even where prohibited by statute.

School boards who have entered into collective bargaining with their teachers (or any other group of employees) should immediately formulate a "strike plan." This plan should be completed and ready for implementation at any time. A good strike plan addresses the following matters:

- Is an injunction feasible?
- Should schools be open or closed?
- Who should coordinate the overall plan?
- Plans for the principals.
- Plans for clerical and non-certified staff.
- Plans for students.
- Plans for building security.
- Plans for substitutes and working employees.
- Communication plans and public relations.
- Transportation plans.
- Continuation of negotiations.
- Continuation of benefits.
- Status of extra-curricular activities.
- Return to work policy.
- List of key community officials.

Appropriate planning which anticipates as many of the above concerns as possible will avoid confusion. Board preparedness can demoralize strikers. Unpreparedness can be a catastrophe.

The Illinois Association of School Boards has material available to help school boards prepare for strikes.

8/ Concluding recommendations

To adjust management style to deal with the problems and constraints of collective bargaining, the following recommendations should be considered:

1) Recognize the realities of adversary collective bargaining—the intervention of the union between employee and employer and the implied threat to administrative authority and to staff involvement procedures. Also recognize that few school boards or unions have the necessary experience and skills and few are prepared psychologically or emotionally to deal with the process.

2) Understand the historical and psychological pressures that have resulted in formalized unions; the needs and the pressures of the faculty; the competition among the unions for recognition status; the conflicts between the union and non-union sympathizers (the conservatives, the secure, and the liberals) during the organizational phase; and the initial response of inexperienced administrators to circumvent the process or make concessions to delay unionization.

3) Recognize the constraints peculiar to schools: an elusive and distant source of revenue controlled by the legislature; traditions of teacher input or shared authority in governance which will be threatened by both union and management; extreme pressures from state-level union leaders whose goals are often unrelated to the diverse needs of teachers at the district level; faculty individuality which will collide with egalitarian union concepts; and

traditions of informal evaluation and classroom freedom which must meet the test of adversary bargaining.

4) Recognize that the key issues will be unit determination, scope of bargainable issues, grievance procedures, and impasse resolution (particulary third party authority). Do not get emotionally involved in fighting windmills, such as recognition itself, affiliation, representation, procedures, and personalities.

5) Accept the realities of adversary bargaining. Attempts to circumvent reality or to develop informal collegial models typically result in frustration and impasse. Select as negotiators individuals who understand the system, the constraints, and the realities of bargaining at the public school level and whose major aim is to reach agreement acceptable to both parties, not to either "bust" the union (by management) or create explosive issues to develop solidarity (by the union).

6) Recognize that collective bargaining does not automatically bring forth unlimited benefits, nor does it automatically destroy the existing structure of governance or administration. Successful bargaining from the union standpoint depends upon realistic expectations of the membership so that the union can bring systematic and regular gains to its clients. Successful bargaining for management requires establishing reasonable strategies and goals to protect its important interests while allowing for union gains. Successful bargaining will, therefore, be conciliatory rather than traumatic, tense but not explosive.

7) Recognize that collective bargaining does formalize policies and procedures; that it results in a rigid legal document; that it equalizes and levels rather than allowing for individual differences; that it is pedantic, not pedagogic; that unions will tend to form bureaucracies very similar to managements; and that it requires a basic understanding by all involved, not just by the chief negotiator, if it is to be non-threatening.

8) Distinguish between labor relations and human relations. Have programs in both, but keep them separate

and distinct, recognizing their differences as well as their values.

Both union and management must be aware that the most satisfied employee is one who feels positive toward management and the union. Destroying the other side also destroys the working relationship and increases tension. To achieve this equilibrium requires a great deal of effort in negotiating and managing a contract, and in understanding the needs, views, and pressures of the other party.

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no power to enforce a decision and can only recommend solutions. Used for both interest and grievance arbitration.

Arbitration—Binding
The arbitrator's decision is final and must be accepted by both parties. A dissatisfied party can only appeal the arbitrator's ruling through the courts.

Arbitration—Compulsory
Arbitration process which is required by law or contract; the parties must submit contract disputes (interest arbitration) to arbitration. If one party calls for arbitration the other party cannot refuse to arbitrate.

Arbitration—Grievance
A final step in a grievance procedure used to determine whether a violation, misapplication, or misinterpretation of an existing agreement has occurred. May be either advisory or binding.

Arbitration—Interest
A process that is used to force parties to reach settlement when at impasse over terms and conditions that are to be included in an agreement. Sometimes called fact finding, and may be either compulsory or voluntary.

Arbitration—Voluntary
Arbitration process which is not compulsory, but which allows either party to refuse to enter into arbitration if it does not feel that the arbitrator can resolve the dispute.

Arbitrator
An impartial third party to whom disputing parties submit their differences for decision (award). An ad hoc arbitrator is one selected to act in a specific case or a limited group of cases. A permanent arbitrator is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

Bargaining Agent
Organization recognized by the employer as the exclusive representative of all employees in the negotiating unit for

Glossary

Agency Shop
A provision in a collective agreement which requires that all employees in the negotiating unit who do not join the exclusive representative pay a fixed amount monthly, usually the equivalent of labor organization's dues, as a condition of employment. Under some arrangements, the payments are allocated to the labor organization's welfare fund or to a recognized charity. An agency shop may operate in conjunction with a modified union shop. (See **Union Shop**)

Agreement
See **Collective Negotiations.** A written agreement between an employer (or an association of employers) and a labor organization (or organizations), usually for a definite term, defining conditions of employment, rights of employees and the labor organization, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement.

American Arbitration Association (AAA)
A private nonprofit organization established to aid professional arbitrators in their work through legal and technical services, and to promote arbitration as a method of settling commerical and labor disputes. The AAA provides lists of qualified arbitrators to labor organizations and employers on request.

Arbitration
Method of settling employment disputes through recourse to an impartial third party, whose decision may be final and binding

Arbitration—Advisory
A method of settling disputes where the arbitrator's decision may be refused by either party. The arbitrator has

purposes of collective negotiations.

Bargaining Unit
Group of employees recognized by the employer or group of employers, or designated by an authorized agency, as appropriate for representation by a labor organization for purposes of collective negotiations.

Caucus
When the parties call "time out" during negotiations and discuss strategy and/or the issues under consideration by themselves.

Certification
Recognition of the labor organization based on the mandatory procedure for determining the exclusive representative of an appropriate unit.

Collective Negotiations—Professional Negotiations
A process whereby employees as a group and their employers make offers and counter-offers for the purpose of reaching a mutually acceptable agreement and the execution of a written document incorporating any such agreement. This term implies good faith on the part of both sides but does not require either side to make concessions to the other

Consultation
An obligation on the part of an employer to consult the employee organization on particular issues before taking action on them.

Contract
A written agreement that is legally enforceable. See **Agreement.**

Crisis Bargaining
Collective bargaining which takes place under the threat of an imminent strike deadline. Distinguished from "extended negotiations," in which both parties have ample time to present and discuss their positions.

Decertification
Withdrawal of a labor organization's official recognition

as exclusive negotiating representative.

Dispute
Any disagreement between an employer and a labor organization which requires resolution in one way or another; e.g., inability to agree on contract terms or to settle a grievance.

Dues Check-off
An agreement by the employer to deduct the organization dues and transmit them to the union.

Exclusive Negotiating Rights
The right and obligation of an employee organization designated as majority representative to negotiate for all employees, including nonmembers, in the bargaining unit.

Fact-finding Board
A group of individuals appointed to investigate, assemble, and report the facts in an employment dispute, sometimes with authority to make recommendations for settlement.

Federal Mediation and Conciliation Service (FMCS)
An independent Federal agency which provides mediators to assist parties involved in negotiations, or in a labor dispute, in reaching a settlement; provides lists of suitable arbitrators on request; and engages in various types of "preventive mediation." Mediation services are also provided by several state agencies.

Fringe Benefits
Generally, supplements to wages or salaries received by employees at a cost to employers. The term encompasses a host of practices (paid vacation, pensions, health and insurance plans, etc.). No agreement prevails as to the list of practices that should be called "fringe benefits." Other terms often substituted for "fringe benefits" include "wage extras," "hidden payroll," "non-wage labor costs," and "supplementary wage practices."

Good Faith
The willingness of the parties to meet and discuss bar-

gaining issues while making, in total, a reasonable effort to reach an agreement. It does not imply that either party concede, compromise, or agree to any particular proposal.

Grievance

A complaint by an employee that a provision of the collective agreement under which he is working is being violated.

Grievance Procedure

A formal plan set forth in the collective agreement which provides for the adjustment of grievances through discussions at progressively higher levels of authority in management and the employee organization. May or may not conclude with arbitration.

Injunction

A court order restraining one or more persons or unions from performing some act which the court believes would result in irreparable injury to property or other rights. This may be a temporary injunction or a permanent injunction.

Labor Management Relations Act of 1947 (Taft-Hartley Act)

Federal law, amending the National Labor Relations Act of 1935 (Wagner Act). The Taft-Hartley Act defined and made illegal a number of unfair labor practices by unions, and retained the definition of unfair practices as applied to employers. The act does not apply to employees in a business or industry where a labor dispute would not affect interstate commerce. Other major exclusions are: employees subject to the Railway Labor Act, agricultural workers, government employees, domestic servants, and supervisors. Amended by Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act).

Maintenance of Standards (Past Practice) Clause

A contract provision which prevents employers from making any changes in existing employment practices or policy without negotiating the change with the em-

ployee organization even if such changes are not considered in the agreement. Automatically broadens the scope of negotiations to cover every conceivable personnel policy or action.

Management Prerogatives
The rights reserved to management which may be expressly noted as such in a collective agreement.

Mediation
Informal attempt by a third party to help in the settlement of an employment dispute through advice or other suggestions, but without specific public recommendations for settlement.

National Labor Relations Act of 1935 (Wagner Act)
Basic federal act guaranteeing employees the right to organize and bargain collectively through representatives of their own choosing. The Act also defined "unfair labor practices" as regards employers. It was amended by the Labor Management Relations Act of 1947 and the Labor-Management Reporting and Disclosure Act of 1959.

No-strike Clause
A provision in a collective agreement in which the employee organization agrees not to strike.

Picketing
The patrolling near the place of employment by members of an employee organization to publicize their dispute.

Ratification
The formal approval of a newly-negotiated agreement by vote of the organization members or the school board.

Recognition
Employer acceptance of an organization as authorized to negotiate, usually for all of the members of a negotiating unit.

Reopening Clause
A provision in a collective agreement stating the time or the circumstances under which negotiations may be reopened prior to the expiration of the contract; com-

monly restricted to only certain provisions of the agreement rather than the agreement as a whole.

Scope of Negotiations
The issues concerning personnel policies and practices and other matters affecting working conditions about which an agency and a labor organization may negotiate an agreement.

Seniority
Term used to designate an employee's status relative to other employees, as in determining order of promotion, layoff, vacation, etc. **Straight seniority**—seniority acquired solely through length of service. **Qualified seniority**—other factors such as ability considered with length of service. **Departmental or unit seniority**—seniority applicable in a particular department or agency, rather than in the entire establishment. **Seniority list**—individual workers ranked in order of seniority.

Strike
A temporary stoppage of work by a group of employees to enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management.

Strike Vote
A vote conducted among members of an employee organization to determine whether or not a strike should be called.

Unfair Labor Practice
Actions which agency management and labor organizations are to avoid in relating to each other throughout the collecting bargaining process.

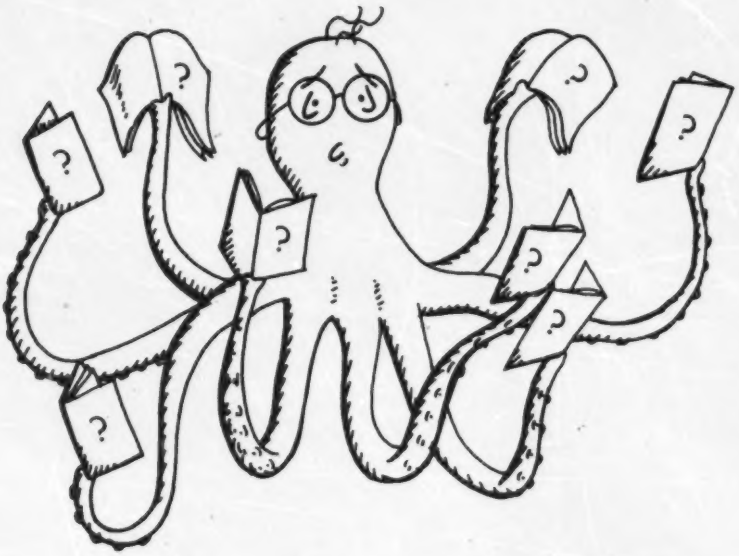
Union Shop
Provision in a collective agreement that requires all employees to become members of the union within a specified time after hiring (typcially 30 days) or after a new provision is negotiated, and to remain members of the union as a condition of continued employment. **Modified union shop**—variations on the union shop. Certain employees may be exempted, such as those

already employed at the time the provision was negotiated.

Zipper Clause

A contract provision specifically barring any attempt to reopen negotiations during the term of the agreement. (See **Reopening Clause**)

If you have some questions . . .



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